

## Cafeteria plans and 403b contributions

### The Relationship between 403b Contributions and Cafeteria Plans

A cafeteria plan allows an employee to select among eligible benefits, including cash, insurance, and flexible spending accounts. A 403b tax-sheltered annuity is not an eligible benefit, so the 403b plan cannot be part of a cafeteria plan. Employers should review their cafeteria plan documents to ensure that their plans do not allow 403b contributions.

Following are two examples which may be helpful in developing compensation strategies involving 403b plans.

*Ex 1: An employee may elect out of health insurance, or elect single insurance (not family), and receive a set dollar amount or a percentage of the employer's share of premiums in cash or have the funds placed into a 403b account. Since the employee may receive the funds in cash, the employee may submit a salary reduction form and place those funds into a 403b account. The 403b contributions are employee contributions, since the funds were eligible to be received in cash and became part of the employee's gross wages. The contributions are subject to FICA taxes, but not state or federal withholding. This strategy appears to comply with federal law and regulations.*

*Ex 2: An employee may elect out of health insurance and receive a set dollar amount or a percentage of the employer's share of premiums. The employee may not receive the funds in cash, but could have the funds placed into a 403b account. Since the employee is not eligible to receive the funds in cash, this arrangement may violate federal law and regulations. An employer wishing to use this compensation strategy should consult with legal counsel before implementation.*

You may find more information about this topic [here](#).

Please note that this information is being provided to you for your consideration but is not intended to be legal advice. You should review your compensation strategies and cafeteria plan document with your legal counsel.